

**Executive Committee Conference Call Minutes**  
**May 26, 2005**  
**(Recorded and submitted by Goldie Caughlan, NOSB Secretary)**

NOSB Executive Committee Members: James Riddle, Kevin O'Rell, Goldie Caughlan, Andrea Caroe, George Siemon, and Rose Koenig.

NOSB members Julie Weisman and Bea James sat in on the call, as board members are invited to do. Gerald Davis and Dave Carter were absent.

NOP Staff: Mark Bradley, Arthur Neal, Katherine Benham, Barbara Robinson, and Keith Jones

1. **Call to Order:** JR called the meeting to order at 11:10 EDT,
2. **Approval of Agenda:** AN asked to defer discussion of the Harvey lawsuit, (item 4-c Agenda, appended, below) to follow the NOP report. JR also asked that the Materials Chair, RK, include in her report information about both sunset review and to discuss the issue of the sufficiency of the tap report, as requested by AN. There being no objections, the agenda was accepted as noted.
3. **Announcements:** None
4. **Chair's Report:** JR reported that prior to May 21 (deadline for comments on the pasture guidance draft) he received a formal request from Tom Hutcheson, in behalf of OTA, asking for a formal 30 day extension. JR explained the Livestock committee could not start to meet on the issue for a month, and a 30 day extension would leave just 25 days to finish committee work to post the next draft prior to the August meeting. He told OTA to continue working on it, and try to get it in, hopefully within two weeks, but that we will continue to receive and consider comments, regardless of the time received. Therefore, pass the word that if others need more time, they can continue to come in. KO said that the word had gotten around, and that others are getting them in as quickly as possible. BR had also received a request for extension from Jay Friedman, prior to the deadline. BR negotiated for an extension of a couple of weeks, and has a letter confirming that he understood that. JR and BR had spoken about the extension and agreed. BR restated the NOP position: When we do rule-making, while deadlines are necessary, to get materials ready for Board meetings, it is nevertheless very important to receive comments, even late, especially if they are substantive in nature.

JR stated that Livestock Committee may not meet until after the first week of June. But then, they will really need to get down to business to meet the deadline.

JR also reported that he was in DC a few days ago on other business, but met with BR and Ken Clayton. He added that he was not attending meetings in an official NOSB capacity, but had met with various public interest groups to discuss issues related to the Harvey lawsuit. A petition is circulating amongst the community. There will be another draft prepared in a couple of weeks. The effort is to help jump-start the rule-making process, and it will be presented to the USDA and the Board for consideration. Regarding that, in spite of summer's onset, we must get our stuff done before July 15 in order to have anything posted for public comment. It is important to give the public 30 days for comment. Even if it is just a first draft, and can continue to be worked on, but we need to get our thinking posted

5. **Secretary's Report:** GC moved, and AC seconded, that the draft of December 14, 2004 EC Minutes be approved. JR noted he was incorrectly identified as the maker of a motion to approve the agenda. The minutes were corrected to reflect that in fact GC had moved, and AC had seconded the motion, which had carried. The correction was accepted. There being no further discussion, the December 14, 2004 Minutes,

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as corrected, were unanimously approved. GC then moved, and AC seconded, that the draft of April 8, 2005 EC Minutes be approved. There being no further discussion, the April 8, 2005 EC Minutes were unanimously approved. GC then inquired of KB whether the November, 2004 minutes (recorded by NOP, since GC was not in attendance at the meeting) had as yet been transcribed, following KB's return from several weeks medical leave. KB stated that they had not as yet been transcribed, and that she would look into it.

### 6. NOP Update (BR and AN):

a - Pending job postings – BR reported that she hoped to have a posting for RM's replacement, as well as that for the ED, ready to go out within the next four weeks. These must be advertised for 30 days. They will be posted on the USA Job site, but will both also be announced on the NOP website, providing a link to take interested parties to the appropriate website to see the postings. Announcements must go to personnel, get in their cue, but BR anticipates no problems with either, particularly with Rick's job, because it is already on the books. And although the ED is a new position, she expects no problems. Personnel always keeps BR informed, and she will also inform NOSB, prior to posting time.

JR: You had talked favorably about the Board role in screening candidates. Should we talk about how that will happen now? BR: Even after the 30 day posting, personnel grades applications, and it is not that simple or fast. Probably it'll be another 30 days before they even get a list to look at. It may coincide with the August meeting, but it's hard to know. There is time to get a plan together. JR: We discussed having a subcommittee, and AC, DC and myself are all interested. If it coincides with the Board Meeting, it might mean having an added meeting there.

b. - **Federal Register Notices:** AN reported that the Sunset Docket has been returned to NOP from OGC, and they need to make some changes, but it will then move back to OGC after changes, then proceed to publishing the docket, as an Advanced Notice of Proposed Rulemaking. Both Crops and Processing were submitted to OGC for review also, but not back yet, and we will let you know as it progresses. AC: Is that materials do you mean? Yes, Crops and Materials. Livestock is all ready for NOP clearance next week. I also have an additional update to report, related to petitions: we are behind on three petitions, but have been in contact with all petitioners. Sulfuric Acid for use as PH Adjuster in livestock manure, Propionic Acid as mold inhibitor in feed, and Gellan Gum as a food additive. For all three we have gone back to petitioners for added information, particularly for justification statements for each, such as justification for why these materials, instead of others on the list, and whether they have evaluated various things, that sort of question.

Also, related to materials, you all received a request for sufficiency evaluation of three technical evaluations. RK and GW had made comments, and ICF made the changes as requested. There was one change not made based on RK's comments however. She had asked them to determine whether the substance would be used as inert, but it had been petitioned as active, so since it was outside the petition they did not address it. With respect to the first report, this I think was good, but we still want responses by June 13. Our acceptance would need be by June 15 (60 days prior to Aug meeting) RK: If we find they are insufficient, that means we don't have turnaround time, or we just start reviewing pending receipt of added info? AN: that is an option, and also dependent upon degree of insufficiency. And we want to make sure the public has as much time as possible, at least 30 days, to respond and comment. AC: we can submit a draft within that 30 day window, and improve the draft prior to meeting. Can we get the report in and see if need improvement within the window? BR: I think so, don't you Arthur? RK: Committees could fill out sheets and put it up as deferral...AN: No, we don't want to get into deferrals. RK: If we officially need to get it up we can't vote on it,. (Discussion). AN: it does not have to get on the agenda for the August meeting. If not going to accept ...AC: I'd object to putting it on as deferred, because that might deter attendance at the meeting by someone, and then if we were to vote on it that doesn't work. AN: if the committee can't make

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a decision, don't put it on the agenda, and work it that way, but you are then not actually deferring it.

c. Harvey lawsuit discussion (deferred to later)

d. **Task Forces:** KJ reported that Pet food and Aquaculture TF's have been named and confirmed. Both are on the website now, and we are organizing a kick-off conference call and should have that set soon. We are working on wild fisheries now, and hopefully will firm that TF up fairly quickly. GS: what is livestock's role? Led by Livestock or by you Keith? KJ: I've taken Jim's recommendations on both groups in the aquatic and wild fish, and what I see is that the NOP will manage the process, set the direction and end result, but I assume you guys don't want to be involved in these on a day to day basis, and want the report to come to the board as clean as possible, and not be involved. I'm open to suggestions though. KO: That is my understanding. KJ: That's always been my understanding. RK: do you assign a chair of each TF? KJ: I think it is a decision of each TF itself. On pet food, Hue and Kevin are on it, and I anticipate that suggested board members will be on the first conference call, and I know will have a lot of questions as to objections and expectations of board, and that the board will set its expectations. But these types of groups work best if not imposed from top down.

RK: I feel, from experience with the compost task force, they need a chair. KJ: never have implied that we would select the chair, or impose one. After wild fisheries is named, we are up and running. GS: Jim, you feel staff should take the lead, right? JR: well KJ suggested that and I agreed that given the size and expertise represented on each of these, that they have a free hand to do their work, and report to relevant committees, and committees will make recommendation to the board, and board will make recommendations to the secretary. Hopefully there will be a lot of consistencies there, More independence there removes the board from being perceived as interfering or micromanaging. KJ: that is a concern we had heard from previous task forces, that they were not given a role of independent fact finders, so it is important to make them independent, free from board influence, so it comes to you neat and clean. I've not received confirmation back from Hue if he's available. KJ: yes Hue is. JR for aquaculture I suggested AC and NO, but Nancy has not gotten back to KJ yet. (discussion). GS will fill in in place of NO, so there won't be a delay.

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JR: I also see reference in the federal register that these are NOSB TF's. KJ: no, the heading in the register is the NOP. I don't know that anyone has ever considered ownership of these, but always in the FR it is designated as NOP/AMS being the agency. JR: There was "NOSB input" mentioned in the FR. Is there any need for anything further from NOSB now then? KJ: I think (on the convening call) it would be important for you, as Chair, to indicate something about the value the board places on information gathered from the TF's. I'll spell out the federal register part. But it is important for these TF members to understand that the board is looking for their best professional judgment on these issues, and that the Board will be open minded. I think that will go a long way in dispelling any myths that their work will be unappreciated, or that the board has a preconceived agenda.

### e. - Re: Deadlines on Use of USDA Organic Seal

BR: We've gotten inquiries, particularly from the media, re NOP response to scope statements, deadlines to use up labels, October 21 as a deadline for "cease and desist" and so on. A look at the April 14 posting showed there was no date, and we're not going to post a deadline by which people have to do something. It will be a case by case basis, a complaint-based process. If there is concern, follow the process, it will be forwarded to compliance people, and that is how it will be dealt with, period. Our statements stand as they are. That is it. Global statements of "everyone stop by such and such a date" is not how it works. It is case by case, and process based. JR: That pertains to sectors that do not have clear standards. BR: That was rescinded. The statement that is up there is the statement that stands.

F – **Other: Sunset Reviews:** AN: we are working on 1994, 1995, 1996 TAPS, to get them up on the website for the records, hopefully within a week or so. They will be flagged in the website – not sure of how yet. We are re-designing both the NOP and NOSB sections of the website. We estimate the posting dates, but can't be certain, just that they will be prior to release of the sunset docket. First we need to scan and separate by substances – AC: that's right away; AN, yes, 3 or 4 weeks, that's our goal. JR: You're revising the websites? AN: yes, we have to; we have lots of things happening. JR: I receive lots of complaints about the website, so that's good news. AN: We need to do it within framework of USDA technology, however, and there are rules about how that goes.

7. **Agenda for August Meeting** – (discussion) Much of the body of the agenda is contained in outlines for committee reports. AN has most things for the agenda, but I'm more concerned in shaping it. Formerly I worked back and forth with Rick AN will you take the lead? AN yes. JR: okay, you wanted a summary of board draft recommendations, and I will need help from all committee chairs on this. When do you need the first draft Arther? AN: actually the first draft should be linked with the FR notice (says KB) and the timeline – by June 13. Submit to JR, and he'll put together a first master draft, and give to AN. GS: is it to start on that Monday? JR: Yes, Sunday is the travel date.

RK: Nothing on sunset can come up, right? Because of so few materials, but it will be mostly committee stuff, GS: I'd like to take public input Monday in the afternoon. RK: Committee all could use time to meet an hour or so. Julie Weisman: I tend to just want to plunge into meeting. We need to set aside time at some point, but being involved in the process best refreshes my memory. Bea James: Yes, my original "overwhelmed" aspect had been from the notion we needed to be fully "up" on every committee's work, but I've realized now it's best to focus on our own committees. And we do need time for committees to get together. AN: committee meetings onsite are a problem, precisely because so many serve on several committees – so there are timing conflicts. RK: I think we should assign an 8 to 10 a.m. time block, for working committee meetings, convene the meeting at 10 30 to 12 for board discussion, and then start the public meeting in the afternoon. (Although no vote was taken, this seemed to be generally agreeable.)

8. **Committee Reports**

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**a. Handling:** KO: We are working on synthetic vs. non synthetic. We want to be sure we are on the same page, especially with Rose and Materials, and other committees. Handling felt materials took the lead, on this, with the draft document for discussion. We want to compile a joint draft recommendation, from handling and materials. Do you agree Rose? RK: yes, and at the last meeting in 2004, we had modified a recommendation, but it was tabled or whatever, because of the lawsuit, and we waited for further work. Our objective would also be to come up together with a consensus document, absolutely, yes. KO: Well we have three dates set aside in June – June, 8, 15 and 23 -- to meet, probably all three times -- for handling discussions. But if we could get materials committee to meet with us, for this synthetic v non synthetic discussion – let's please, see if can find a date ASAP..

We are working on Ag v. non ag, working on a draft, and will get it to committee members by Friday this week, and on one of these subsequent meetings will hopefully finish by the July 15 deadline -- anyway, a working recommendation from Handling to the Board – so it is on the agenda for action at the August meeting. JR: would you send the draft out to other board members in drafting process, or what? KO: We will try to get our best thinking from the committee first, get it nailed down, and then absolutely, get it to the full board, if we can do it prior to the deadline. JR: just even informally, pass it through the rest of the board as soon as that is possible – that is my thought. KO: Well, we'd like to give the first round to the HC, give it a few days, then send it on to the full board for a few days before we vote a recommendation. JR, Good. RK: back when the Siegel letter came out on yeast, I had commented to BR and JR and the board of ways to consider it, and if you don't have it, I could re-send it.

KO: after we vote on Ag v non-ag, we feel to get it more settled first, we need it before moving on to yeast, then we'll take up the yeast re-classification, if appropriate, and will need to pass the recommendation to the full board.

KO: Also, I see “procedures 205.606,” what is that Jim? JR: It is taken from the work plan, relates to the whole Harvey case. KO: But if remanded for clarification, shouldn't we wait for the decision? (BR returns to call from short interruption): BR: I think so, what is under discussion? AN: Only catch, even before Harvey it is an issue, because we have a lecithin petition, a petition that it be removed for 606 -- but lacking a criteria for movement either way, what determines “commercial viability?” We will have problems if we do not explore it, so I agree with Jim, it needs attention. JR: right, procedures will be about the same, but the role of the technical contractor is not in their work now, it is more an evaluation of sufficiency of ingredients, economic analysis. BR: and KJ (together) state It is a question of how you assess that, and good arguments can be made on both sides. -- JR's need to press forward, and KO's that we may need to await the decision. That's legitimate too. But it is best to wait, yet to begin thinking about it for sure, because we can't ignore it as AN says – yet the board will have to get seriously involved when the decision comes, and how to operationalize it when it comes down. But we don't have enough to address it yet.

BR: regardless of the Harvey case, there is no definition for commercial availability. The Harvey has focused the light on this thing, but the fact is there is no comfort level for adding to or removing from the national list relative to commercial availability at this point, period. So it definitely does need to be on the board work plan, to prepare eventually for criteria for rule making – or...guidance or whatever – but put out there for the public to know how to determine what is commercial availability. RK: seeds, for instance, is a good example. JR: we do have a response in crops for seeds, but that is between producer and certifier, but with minor ingredients, determination by the board, to place item on 606 list or remove – it just must be consistent, but one must be in the Federal Register, similar to others. KJ: That's correct, But it will be operationalized with the board involved in making the commercial availability decision. AN: Having a measurable criteria is the issue. Procedures – that's the next step. To operationalize is one thing, but

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measurable criteria is first, and transparent and predictable.

RK: Handling and Materials again should maybe work together on this. KO: yes, but the clock is ticking, and we have Synthetic vs. Non Synthetics, Ag vs. Non Ag, the yeast issue – all have to be dealt with and all are priorities – and then if there is time, we can bring it up jointly with Handling and Materials committees and start the thought process.

**b. Livestock** -- GS: For now the Pasture Access is the big thing to be done by August. We hope to schedule calls starting two weeks after May 21. We need questions to come in on sunset materials that we need to focus on and decide. Also regarding the Harvey lawsuit judgment effects, and the replacement issue, all need to be worked on, and consider changes that will be expected to come about because of the judgment. And then on the Apiculture issue, NO is working on it, getting feedback. What about the methionine issue Barbara?

BR: Given the lawsuit, we thought we could not do a docket on it, but now we've decided to process a docket on that anyway, even though it probably may be problematic after the court order. GS: because of synthetics classifications? So, the "feed mill" issue? BR yes. But we can possibly buy some time with an extension, for the researchers, so yes, we will go ahead and put the extension on the docket, for the methionine. JR: Will that be with the other livestock materials? BR No, it is a stand alone, because it is a time extension only on methionine.

**c. Crops** - JR: Since NO as Chair, and also GD as Vice Chair, are both not on the call today, there is no report from Crops. With no crops committee meeting scheduled, I am concerned, as I've expressed earlier, because of the amount of work they have pending. (discussion) RK volunteered to contact GD and help him get a meeting together and chair a meeting. JR also stated he will start work on a temporary research variance, as a first draft, to get things moving along.

**d. Materials:** RK discussed the new process of TAPs. Now the Technical Review Contractors are not giving their recommendations to the board, especially on compatability issues. Under the Act, the board has authority to name a Technical Advisory Panel to provide scientific input, between the review and the committee making a recommendation. RK questioned the NOP as to whether it could be a joint process, with the PD and Materials committees. . BR: Rick had suggested it be the chairs of the committees. RK: we had thought we could convene a TAP for instance when added info is needed, as here, with the compatability issue, or even when deficiencies exist, if alternatives are not explained well – it is an option for the board to receive formal input, technical input, for crops, livestock, processing. However, we would need to develop a protocol to think about how to do that. JR: Since the committee has not done work on it, is it likely to be on the August agenda? RK: No, not for Aug, but maybe by the fall meeting we could take a stab at it. I'd first like to finish this one round with the contractors, see how they work for the committees at this point.

AN: I've pretty well already covered the item "stuff in the pipeline", (an item noted on the Materials Report for today's agenda). I talked about the status of petitions, and I don't need to cover those again. But speaking to the committee chairs, I do urge you to send your comments to me (using the sufficiency report document received from AN earlier). It is necessary, in order so we can see if the reviews are sufficient. If there is insufficiency there, in any way, and if it isn't documented now, then we won't have any recourse to ask for added info even if it is within the scope of work expected of the TAP contractors. That's why this is just so critically important right now, and why the committee chairs do need to go through those substances now thoroughly and get the Sufficiency Document to me ASAP.

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RK: I sent requests to chairs also, for substances they have already earmarked, to be looked at for Sunset. So far, GS and KO replied back. Arthur my question -- for example with flavors or colors, I don't recall, since we didn't deal with this in my tenure on the board, but I wonder: do we have any TAPS of sufficient merit for those? Or can we ask contractors to go through more? How do we handle Sunset Technical Review requests Arthur? .AN: I have a meeting with ICS week after next to talk about that, and find out what we can request. Because if we get into having to do full blown TAPs or evaluations, what kind of time frames would we look at, and what would be reasonable requests -- so we'll hope to learn something. RK: okay, I will send you a formal letter based upon chairs input to me, and if chairs, GS and KO for instance have specific questions, regarding the substances, then it would be very important to state those ahead so AN has info to present before meeting with contractors. I am thinking, George, in terms of the two you brought up, there is a lot of info already, but if there are specific needs, let me know. GS: yet but some things, like in 1995, there was so little info made available, or brought up. JR: Are the concerns, that the substances may not be necessary any longer? RK: it is if there has been a significant change in the industry, and not a complete re review, then that should be clarified. (AN then left the call, to attend to other business).

**E - Accreditation:** AC: Regarding the ANSI issue, we are drafting procedures, and one is a specification as to how peer review will take place in future, who does it, and will work with KJ to determine what peer review exactly is, and then the procedure will be drafted laying out how peer review will be responded to and how interaction will be between NOP staff and NOSB on the results -- along with it may be a request for rulemaking, specifically to define what peer review is in the regulations. JR: Mike Lacey is working on the drafting. The final step is that the evaluation report currently have the ANSI report and NOP response, that it will be referred to the board for comment, and since we have one to work from KJ supported the board making it a one-time request. That is, write a procedure and then testing of the procedure, and that would be done each time and submitted to the full board). So hopefully this will be completed before the July 15 deadline. Regarding the retailer certification Q and A's that the Handling committee initially did, and presented at the last board meeting, Accreditation committee members are working on responses to those, and will pass it to Handling for their input. Specific issues outline what is voluntary certification -- which seems to be the chief problem -- and then defining the liability of the certifier that certifies those who are voluntarily certified. The committee is hopeful this will be completed well before the July 15 deadline.

**F. Policy Development:** -- In the absence of DC, as Chair, Board member Bea James, a member of the committee, reported on PDC's activities. BJ states that the collaboration document that JR sent her is mostly updated, and she is looking at incorporating it into the Policies and Procedures Manual. DC and JR are working with BJ to get it shaped. Also working on the Responses to Q and A requests, when NOP submits those to the NOSB asking for input. Working on submission procedures so that answers can be tuned around more quickly -- also, working on revisions to the BPM, trying to add in the collaboration material, and that brought to light other problems -- mostly the BPM needs an overall facelift, simple attention, such as the table of content pages don't match. Basic housekeeping stuff to make it more useful, more reader friendly and concise. AC: asked whether the BPM changes will it be provided us in track mode so we can track and follow? BJ: says yes, definitely, and she will want the entire board to look at it and give feedback. . JR: I'm just so excited and pleased that Bea has jumped in and has undertaken this effort and is working on it! BJ: That brings up this, too, that I have some other ideas for what to do with other documents, such as maybe add the Chem 101 stuff, so it is useful, and we just need to find the right place for them such documents.

### **Deferred Agenda Item 4-c -- the Harvey v Veneman lawsuit update:**

BR: we don't have anything much to add. The District court hearing is June 9 at 3 pm in Portland, Maine, in district court, but we have no timeframe for what to expect after the court enters its order. JR: I see in

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USDA's filing for justification for rulemaking, including stakeholders, that includes NOSB, and if it allows for a deliberative process, just like commercial availability criteria discussion, there will need to be room for board input re rulemaking.

BR: there may be two separate things: when we need to comply with the court order, understand: it will be "notice and comment rulemaking" -- it will not be "would you like it" but rather it will be "you will" do this as the court orders, period. Then there could be amendments to the regulations involved, separate and apart from complying with the court order, that contemplate different ways to actually implement the law. But I am not conjecturing anything at this time. But there are going to be big policy questions to be considered, and we will not mix those two types of rule making together. Entertaining new types of regulations, where we want public input -- that process is a long and arduous process, as we all know, whereas compliance with the court order is clean, unfettered by conversation.

**Adjournment:** AC moved and GS seconded that the meeting adjourn. The meeting was unanimously adjourned at 1:00 pm. EDT.

\*\*\* below:

Draft Agenda for meeting of May 26, 2005

1. Approve agenda
2. Announcements
3. Chair's report - Jim
4. Secretary's report - Approve EC minutes - Goldie
4. NOP update – Barbara, Arthur
  - a. Pending job postings
  - b. Federal Register notices
  - c. Harvey lawsuit developments
  - d. Formation of task forces
  - e. October 21, 2005 deadline re: use of USDA Organic seal
  - f. Other
5. NOSB August meeting agenda - Jim
6. Committee reports
  - a. Handling - Kevin
    - i. Synthetic vs nonsynthetic
    - ii. Ag vs nonag
    - iii. Procedures for 205.606 evaluations
  - b. Livestock – George
    - i. Revisions to draft pasture guidance – comments received
  - c. Crops – Nancy
    - i. Compost
    - ii. Temporary research variances (w/ PDC)
    - iii. Revised organic seed rec'd
  - d. Materials – Rose
    - i. TAP selection procedures
    - ii. Petitioned substances in pipeline
  - e. Accreditation – Andrea
    - i. Rec'd for peer review panel
    - ii. NOSB response to ANSI report
    - iii. Retail certification Q&A (w/ HC)
  - f. Policy Development - Dave



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- i. Collaboration document/responding to Q&A requests
  - ii. Other revisions to BPM
- 7. Set next EC meeting
- 8. Other business
- 9. Adjourn